

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| JASON R. C. WHIBBEY,            | ) |                       |
|                                 | ) |                       |
| Plaintiff,                      | ) |                       |
|                                 | ) |                       |
| v.                              | ) | Case No. CIV-12-211-D |
|                                 | ) |                       |
| CAROLYN W. COLVIN,              | ) |                       |
| Acting Commissioner,            | ) |                       |
| Social Security Administration, | ) |                       |
|                                 | ) |                       |
| Defendant.                      | ) |                       |

**ORDER**

This matter comes before the Court for consideration of Plaintiff's Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) and Motion for Award of Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 25]. Plaintiff's attorney asks the Court to approve a fee award in the amount of \$13,800.00. The Acting Commissioner has made a timely response to the Motion for attorney fees, acknowledging the lack of a direct financial stake in the award but urging the Court to undertake an independent review and determine the reasonableness and timeliness of the fee request under § 406(b).

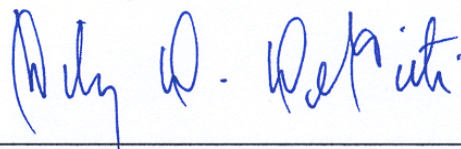
Upon consideration of the Motion in light of *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002); *Wrenn v. Astrue*, 525 F.3d 931 (10th Cir. 2008); and *McGraw v. Barnhart*, 450 F.3d 493 (10th Cir. 2006), the Court finds that the Motion should be granted. Plaintiff's attorney may recover a reasonable fee for the representation of Plaintiff in this case up to the statutory limit of 25% of past-due benefits, provided the attorney refunds the smaller amount of the fee awarded under the Equal Access to Justice Act (EAJA). *See* Order of Sept. 13, 2013 [Doc. No. 21]. The supporting documents with the Motion, as well as the case record, reveal

a total of 25.5 hours of legal services performed for Plaintiff's representation in this case, which resulted in a favorable judicial decision. *See* Judgment and Order of Remand [Doc. No. 15]. After remand, Plaintiff and his dependent were determined to be entitled to benefits, and were awarded a past-due amount totaling \$79,612.00. The Motion has been filed within a reasonable amount of time after notice of Plaintiff's award. Plaintiff has a contingent-fee agreement with his attorney, which entitles the attorney to be paid 25% of past-due benefits resulting from Plaintiff's claim for the legal work done in federal court.

Under the circumstances presented, the Court finds that the requested amount of \$13,800.00 represents a reasonable fee for the work done in this case in view of the nature of the representation and the results achieved. This amount is less than 25% of Plaintiff's award of past-due benefits obtained by reason of the judgment entered July 10, 2013. The Court therefore finds that the Motion of Plaintiff's attorney should be granted.

IT IS THEREFORE ORDERED that the Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) and Award of Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 22] is hereby GRANTED. The Court approves an award of attorney fees under 42 U.S.C. § 406(b) to the signatory to Plaintiff's attorney, Kyle J. Saunders, in the amount of \$13,800.00. The attorney shall promptly refund to Plaintiff Jason R.C. Whibbey the amount of EAJA fees received.

IT IS SO ORDERED this 11<sup>th</sup> day of April, 2016.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE